

**IDAPA 16
TITLE 04
CHAPTER 17**

16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

000. LEGAL AUTHORITY.

The Idaho Legislature, under the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code, has empowered the Board of Health and Welfare with broad authority to develop and coordinate services for persons with developmental disabilities, so that the needs of each such person can be met. The authority delegated includes the power to promulgate standards and rules. **This will be reviewed by Deputy Attorney General** (3-20-04)

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-20-04)

02. Scope. These rules contain and establish standards and minimum requirements for residential habilitation agencies which provide **supported living** services to **persons adults with developmental disabilities living in their own home that is not a provider owned or controlled residence under agreement and in connection with programs funded in any part by the Department of Health and Welfare**. The provisions are intended to regulate agencies so that services to participants will optimize participant opportunities for independence and self-determination while assuring adequate supports, services, participant satisfaction and health and safety. **As a component of the service delivery system in Idaho for persons with developmental disabilities Residential** habilitation agencies will provide individualized services and supports encouraging participant choice, providing the greatest degree of independence possible, enhancing the quality of life, and maintaining community integration and participation. Services provided by such agencies are intended to be person-centered and participant-driven, and based on a person-centered plan to meet each participant's needs for self-sufficiency, medical care and personal development with goals that safely encourage each participant to become a productive member of the community in which he lives. Access to these services must be prior authorized **in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 by the paying entity.** (3-20-04)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. (3-20-04)

003. ADMINISTRATIVE APPEALS.

Contested case hearings must be governed according to the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-20-04)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this chapter of rules. (3-20-04)

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-20-04)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (3-20-04)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at

450 West State Street, Boise, Idaho 83702.

(3-20-04)

04. Telephone. The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. (3-20-04)

05. Internet Website. The Department's internet website is <http://www.healthandwelfare.idaho.gov/>. (3-20-04)

006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-20-04)

007. -- 009. (RESERVED)

010. DEFINITIONS -- A THROUGH N.

For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Abuse. ~~Any conduct of an employee or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence~~ As defined under Section 39-5302, Idaho Code abuse means the intentional or negligent infliction of physical pain, injury or mental injury.

02. Administrator. The individual who is ~~vested~~ appointed with primary responsibility for the direction and control of an agency, ~~and who has power to legally bind the agency to contracts.~~ (7-1-95)

03. Advocate. An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A participant may act as his own advocate. (3-20-04)

04. Agency. Any business entity that directly provides residential habilitation supported living services. ~~under a Home and Community Based Services waiver for to~~ adults with ~~developmental~~ disabilities. (3-29-12)

~~**05. Appeal.** A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ (7-1-95)

~~**06. Audit**~~ A methodical examination and review. (7-1-95)

~~**07.**~~ **05. Board.** The Idaho Board of Health and Welfare. (3-29-12)

~~**08.**~~ **06. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-95)

~~**09.**~~ **07. Certificate.** A permit to operate a residential habilitation agency. (7-1-95)

~~**10.**~~ **08. Certifying Agency.** Units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. (3-29-12)

~~**11.**~~ **09. Chemical Restraint.** The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)

~~**12.**~~ **10. Complaint Investigation.** An investigation of an agency to determine the validity of an allegation

against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)

13.11. Department. The Idaho Department of Health and Welfare. (7-1-95)

15.12. Deficiency. A determination of non-compliance with a specific rule or part of a rule. (7-1-95)

16.13. Director. Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)

17.14. Exploitation. ~~An action which may include the misuse of a vulnerable participant's funds, property, services, or resources by another person for profit or advantage~~ As defined under section 39-5302 Idaho Code exploitation means an action which may include, but is not limited to, the unjust or improper use of a vulnerable participant's financial power of attorney, funds, or property or resources by another person for profit or advantage. (3-20-04)

~~18. Full Certificate. A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)~~

15. Functional assessment. An evaluation of the participant's strengths, needs and interests that guides the development of program implementation plans.

19.16. Governing Authority. The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)

20.17. Government Unit. The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)

21.18. Guardian. A legally-appointed person who has responsibility for the care ~~of the person~~ or property of another, under Section 66-404, Idaho Code. (3-20-04)

19. Habilitation services. Service aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: Self-direction, Money management, Daily living skills, Socialization, Mobility and Behavior shaping and management.

20. Immediate Jeopardy. A situation in which the provider's non-compliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a participant.

~~22. Implementation Plan. Written documentation of participants' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data based progress and participant satisfaction of the program developed, implemented, and provided by the agency specific to the plan of service. (3-20-04)~~

011. DEFINITIONS -- M THROUGH Z.

For the purposes of these rules the following terms are used as defined below: (3-20-04)

01. Measurable Objective. A statement which specifically describes the skill to be acquired or service/support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. (7-1-95)

02. Mechanical Restraint. A device ~~that the participant cannot remove easily~~ that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. (3-20-04)

03. Medication. Any substance or drug used to treat a disease, condition or symptoms which may be taken orally, injected or used externally and is available through prescription or over-the-counter. (7-1-95)

04. Neglect. ~~The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person under Section 39-5302 (8), Idaho Code.~~ As defined under section 39-5302 Idaho Code neglect means failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself. (3-20-04)

05. Outcome-Based Review. ~~An on-site review conducted by a trained reviewer authorized by the Department to determine participant satisfaction with the services received and improvement or impact upon his lifestyle following implementation of the plan of service.~~ (3-20-04)

06.05. Participant. ~~A person who receives health care services, is eligible for Medicaid, and~~ An adult who is receiving residential habilitation supported living services. (3-20-04)

07. Person-Centered Planning Process. ~~A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service.~~ (3-20-04)

08. Person-Centered Planning Team. ~~The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process.~~ (3-20-04)

09. 06. Physical Restraint. Any manual method that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. Excluded are physical guidance and prompting techniques of brief duration. (7-1-95)

10. 07. Physician. Any person licensed as required by Title 54, Chapter 18, Idaho Code. (7-1-95)

11. Plan Developer. ~~A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person centered planning process.~~ (3-20-04)

12. Plan Monitor. ~~A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles.~~ (3-20-04)

13. 08. Plan of Service. An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty five (365) days. (3-20-04)

09. Program Implementation Plan. A plan that details how goals from the plan of service will be accomplished.

16.10. Progress Note. ~~A written notation, dated and signed by a member of the person centered planning team or service provider, that documents facts about the participant's assessment, services provided, and the participant's response during a given period of time recording participant progress or response to service, date, time, duration and type of service signed and dated by the staff that provided services.~~ (3-20-04)

11. Professional. An individual responsible for development and instruction of skill training programs to direct care staff. This position may be referred to as the program coordinator or QIDP as defined in 42 CFR 483.430. The individual must also meet qualifications as defined in subsection 202 of these rules.

14.12. Provider Status Review. The written documentation that identifies the participant's progress toward goals defined in the plan of service and includes why the participant continues to need services. (3-20-04)

15. Psychosocial Information. ~~A combined summary of psychological and social histories of a participant designed to provide the person centered planning team with an accurate reflection of the participant's~~

13. Provisional Certificate. A certificate issued by the Department to a DDA with deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, but not to exceed, six (6) months.

~~17.14.~~ Punishment. Any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a participant's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. (3-20-04)

15. Quarterly. For the purpose of these rules a three-month period based upon the calendar year starting in January. Quarter 1 is January-March; Quarter 2 is April-June; Quarter 3 is July-September; and Quarter 4 is October-December.

~~19.16.~~ Residential Habilitation. Services consisting of an integrated array of individually-tailored services and supports furnished to an eligible participant which are designed to assist them to reside successfully in their own homes, with their families, or alternate family home. Residential Habilitation includes Habilitation services, personal care services and skill training. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. (3-20-04)

~~20. **Reviewer-Surveyor.** A person or other entity authorized by the Department to conduct reviews to determine compliance with the program requirements and participant satisfaction with the services licensing and certification requirements as defined in this section of rules.~~ (3-20-04)

~~21.17.~~ Rule. A requirement established by state, federal, or local government under the law and having the force and effect of law.

(3-20-04)

~~22.18.~~ Seclusionary Time Out. The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration or probability of the occurrence of a response, and entails the removal of the individual to an isolated setting. (7-1-95)

~~27.19.~~ Services. ~~Services paid for by the Department~~ **Paid services** that enable the individual to reside safely and effectively in the community. (3-20-04)

20. Skill Training. To teach participants family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs.

~~23.1.~~ Substantial Compliance. An agency is in substantial compliance with these rules when there are no deficiencies which would endanger the health, safety or welfare of the participants. (3-20-04)

22. Supervision. ~~Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity~~ Initial and ongoing oversight of service and support elements by the professional qualified to oversee direct service personnel. (7-1-95)

23. Supported Living. One, two, or three participants who live in their own home or apartment and require staff assistance. A residence is considered to be the participant's own home when it is owned or rented by the participant. The home is defined to be owned or rented by the participant when the participant has entered into a valid mortgage, lease, or rental agreement for the residence and when the participant is able to provide the Department with a copy of the agreement. When two or three participants reside in the same home, services may be provided through individual or group staffing arrangements as approved by the Department. The agency owner, administrator or personnel are prohibited from owning the home or apartment.

24. Supported Living Personnel. Any owner or employee of the Residential Habilitation Agency.

28.25. Supports. ~~Formal or informal s~~Services and activities, not paid for ~~by the Department~~, that enable the individual to reside safely and effectively in the setting of his choice. (3-20-04)

26. Survey. A methodical examination and review.

20.27. Reviewer Surveyor. A person or other entity authorized by the Department to conduct reviews to determine compliance with ~~the program requirements and participant satisfaction with the services~~ licensing and certification requirements as defined in this chapter of rules.

~~25. Service Coordination.~~ Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 720 through 779. (4-6-05)

~~26. Service Coordinator.~~ An individual who provides service coordination to a Medicaid eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 720 through 779. (4-6-05)

~~27. Services.~~ Services paid for by the Department Paid services that enable the individual to reside safely and effectively in the community. (3-20-04)

~~28. Supports.~~ Formal or informal sServices and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (3-20-04)

29.28. Transition Plan. An interim plan developed by the residential habilitation agency defining activities to assist the participant to transition out of residential habilitation services from that agency. (3-20-04)

~~30. Waiver Services.~~ Individually tailored services and supports as amended under Waiver Number 0076.90 (B) provided by an agency to an eligible recipient to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage choice, and to achieve and maintain community integration and participation. (7-1-95)

012. -- 099. (RESERVED)

100. CERTIFICATION -- GENERAL REQUIREMENTS.

01. Certificate Required. ~~After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency may operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. No agency may provide services without a current certificate~~ Before any agency can operate as a Residential Habilitation agency, it must obtain Residential Habilitation certification from the Department.

a. No agency may provide services until the Department has approved the application for certification. No agency may provide services without a current certificate.

b. The Department is not required to consider the application of any operator, administrator, or owner of an agency who has had his license or certification revoked until five (5) years have lapsed from the date of revocation. (3-29-12)

02. Application. An application for a certificate must be made to the Department upon forms provided by the Department. ~~and must contain the required information under Section 101 of these rules, including affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board.~~

a. Complete applications may be submitted up to three times within a 365 day time frame for review. If the application is incomplete upon a third submission, the application will be denied. The applicant may not resubmit an application for six months from the date of the denial notice.

b. Application content. The application must contain the following to be considered complete:

- i. Application form which contains the name, address and telephone number of the agency, Type of services to be provided, the geographic service area of the agencies, and the anticipated date for the initiation of services.
- ii. An accurate and complete statement of all business names of the agency as filed with the Secretary of State, whether an assumed business name, partnership, corporation, limited liability company or other entity, that identifies each owner with more than five percent (5%) interest in the agency, and the management structure of the agency;
- iii. A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency complies with pertinent state and federal requirements governing equal opportunity and nondiscrimination;
- iv. A written code of ethics policy adopting a code of ethics relevant to professional activities with participants and colleagues, in practice settings. The policy must articulate basic values, ethical principles and standards for confidentiality, conflict of interest, exploitation, and inappropriate boundaries in an agency's relationship with participants, relatives, or with other agencies. This code of ethics must reflect nationally-recognized standards of practice;
- v. A copy of the proposed organizational chart or plan for staffing of the agency; Staff qualifications including resumes, job descriptions, verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks", and copies of state licenses and certificates for staff when applicable;
- vi. Written description of the agency's quality assurance program developed to meet requirements in Section 405 of these rules;
- vii. Written policies and procedures for the development and implementation of staff training to meet the requirements of Section 204 of these rules.
- viii. Staff and participant illness policy, communicable disease policy, and other health-related policies and procedures required in Section 300 of these rules;
- ix. Written policies and procedures that address special medical or health care needs of participants required in Section 300 of these rules;
- x. Written transportation safety policies and procedures required in Section 300 of these rules;
- xi. Written participant grievance policies and procedures to meet requirements in Section 300 of these rules;
- xii. Written medication policies and procedures to address Medication standards and requirements to meet requirements in Section 302 of these rules;
- xiii. Written policies and procedures that address the development of participants' social skills and the management of participants' inappropriate behavior to meet requirements in Section 303 of these rules;
- xiv. Written termination policies and procedures in accordance with Section 400 of these rules;
- xv. Written policies and procedures for reporting incidents to the adult protection authority and to the Department to meet requirements in Section 404 of these rules;
- xvi. Written description of the program records system including a completed sample of a program implementation plan, and a monitoring record;
- xvii. Written description of the fiscal record system including a sample of program billing;
- xviii. Any other policies and procedures requirements as outlined in section 300 of these rules; and
- xviii. Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which certification is requested.

03. Denial. The certifying agency may deny any application. ~~when persuaded by evidence that such conditions exist as to endanger the health or safety of any participant.~~ (3-20-04)

a. ~~Additional~~ Causes for denial of certificate may include: (7-1-95)

i. ~~The residential habilitation agency does not meet the needs of participants as written on the plans of service or Implementation Plans which will violate the participants' rights~~ The application does not meet all rule requirements; or (3-20-04)

ii. The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

iii. ~~The residential habilitation agency has a history of repeat deficiencies.~~ The application is incomplete. (7-1-95)

b. Before denial is final, the certifying agency must provide the opportunity for a hearing at which time the owner ~~or sponsor~~ or administrator of an agency may appear and show cause why the certificate should not be denied. ~~A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any participant. The decision to grant a waiver must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the certifying agency.~~ Contested case hearings, including denial and revocation, must be conducted under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-20-04)

~~04. — Revocation. The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any participant under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include:~~ (3-20-04)

~~a. — The agency has a history of repeat deficiencies;~~ (3-29-12)

~~b. — The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application;~~ (3-29-12)

~~c. — The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of participants;~~ (3-29-12)

~~d. — The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency;~~ (3-29-12)

~~i. — Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency;~~ (3-29-12)

~~ii. — Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation;~~ (3-29-12)

~~e. — The agency refuses to allow inspection of all residential habilitation records;~~ (3-29-12)

~~f. — The agency is not in substantial compliance with the provisions for services of participants' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.g.; or~~ (3-20-04)

~~g. — When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action.~~ (7-1-95)

054. Conformity. Applicants for certification and certified residential habilitation agencies must conform to all applicable rules of the Department. (3-20-04)

065. Inspection of Residential Habilitation Records. The residential habilitation agency and all records required under these rules must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access must result in revocation of the residential habilitation agency's certificate. (3-20-04)

~~07. — Agency Provider Training. The Department must assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to participants.~~ (3-20-04)

101. ~~CERTIFICATION—ISSUANCE OF CERTIFICATES~~ TYPES OF CERTIFICATES ISSUED.

The Department issues certificates that are in effect for a period of no longer than three (3) years. The types of certificates issued are as follow: ~~will conduct an initial survey upon receipt of a completed application.~~ (3-29-12)

01. Initial Certificate. When the Department determines that all application requirements have been met, an initial certificate is issued for a period of up to six (6) months from the initiation of services. ~~During this six (6) month period, T~~the Department ~~evaluates~~ will survey the agency prior to the certificate expiration date to ensure the agency's ongoing capability to provide services and ~~to meet the standards of~~ is in substantial compliance with these rules. ~~The Department will resurvey the agency prior to the end of the initial certification period.~~ (3-29-12)

02. One-Year Certificate. A one- (1) year certificate is issued by the Department when it determines the agency is in substantial compliance with these rules, but there may be areas of deficient practice which would impact the agency's ability to provide effective care. An agency is prohibited from receiving consecutive one- (1) year certificates.

03. Three-Year Certificate. A three (3) year certificate is issued by the Department when it determines the agency requesting certification is in substantial compliance with these rules and has no areas of deficient practice that would impact safe and effective care.

04. Provisional Certificate. When a residential habilitation agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a certificate will be issued. If the agency is determined to be out of compliance, the certificate will be denied or revoked.

102. Renewal and expiration of certificate. An agency must request through a Department approved process renewal of its certificate no less than ninety (90) days before the expiration date of the certificate, to ensure there is no lapse in certification.

01. A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. (3-29-12)

~~**03. Provisional Certificate.** When a residential habilitation agency is found to be out of substantial compliance with these rules, but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance to a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If the Department determines the agency is in compliance, a certificate will be issued. If the agency is determined to be out of compliance, the certificate will be denied or revoked.~~ (3-29-12)

04.02. Expiration of Certificate. Without Timely Request for Renewal. ~~An agency must request renewal of its certificate no less than ninety (90) days before the expiration of the certificate to ensure there is no lapse in certification. After initial certification the Department may issue a certificate that is in effect for up to three (3) years based upon an agency's substantial compliance with this chapter of rules.~~ Expiration of a certificate without a timely request for renewal automatically rescinds the agency's certification to deliver services under these rules. (3-29-12)

03. Availability of Certificate. The certificate must be posted in a conspicuous location in the Residential Habilitation agency office and available upon request by the participants, their guardians and members of the public.

~~102.~~103. CERTIFICATE NOT TRANSFERABLE.

The certificate is issued only to the agency named in the application, only for the period specified, and only to the owners or operators as expressed on the application submitted to the Department. The certificate may not be transferred or assigned to any other person or entity. (3-29-12)

~~103.~~104. RETURN OF CERTIFICATE.

The certificate is the property of the state and must be returned to the state if it is revoked or suspended or voluntarily closed. (3-29-12)

~~104.~~105. CHANGE OF OWNERSHIP, ADMINISTRATOR ~~OR LESSEE~~.

01. Notification to Department. Because certificates are not transferable from one (1) individual to another or ~~from one (1) lessee to another~~ or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, ~~lessee, title~~, or address occurs, the owner or designee must notify the ~~Department~~ the Division of Licensing and Certification in writing through the Department approved process. (3-20-04)

02. New Application Required. ~~A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change~~ In the instance of a change of ownership or lessee the new owner must submit a new application to the certifying agency at least sixty (60) days prior to the proposed date of change. The A new application must be submitted to the Division of Licensing and Certification through the Department approved process and must contain the required information under Section 100.02 of these rules. (7-1-95)

~~**03. Arms Length Agreement.** Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties.~~ (3-20-04)

~~105.~~106 -- 199. (RESERVED)

~~200. QUALITY ASSURANCE OUTCOME~~

~~**01. Responsibilities.** The certifying agency must conduct an outcome based review on each residential habilitation agency on a routine basis as specified in the service agreement. The outcome based review must include at least the following:~~ (3-20-04)

~~**a.** Review of participant participation and satisfaction in residential habilitation services and identification, planning, and delivery; and~~ (3-20-04)

~~**b.** An overall policy and administrative review and, if necessary, a clinical record review; and~~ (7-1-95)

~~**c.** Assessment of the extent to which the agency's services meet the needs of the participant as identified on the plan of service, and promote community integration and participation.~~ (3-20-04)

~~2010.~~ ADMINISTRATION.

01. Scope. Each residential habilitation agency must be organized and administered under one authority. If other than a single owner or partnership, the agency must have a governing board which assumes full legal responsibility for the overall conduct of the agency. (3-20-04)

02. Structure. The administrative responsibilities of the agency must be documented by means of a current organizational chart. (3-20-04)

- 03. Responsibilities.** The governing authority must assume responsibility for: (3-20-04)
- a. Adopting appropriate organizational bylaws and policies and procedures (3-29-12)
 - b. Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator must participate in deliberation of policy decisions concerning all services; (3-29-12)
 - c. Providing a continuing and annual program of overall agency evaluation; (3-29-12)
 - d. Assuring that ~~appropriate~~ training, space requirements, support services, and equipment for residential habilitation agency staff are provided to carry out assigned responsibilities; and (3-29-12)
 - e. Scheduling coverage to assure compliance with the Plan of Service and Implementation Plans. ~~and all work schedules must be kept in writing. Daily work schedules, reflecting the daily adjustments of employees, shall be maintained showing the personnel on duty at any given time. The agency must specify provisions and procedures to assure back-up coverage for those work schedules.~~
 - f. ~~Cooperating in participating in a system by which to e~~Coordinate with other service providers continuity of the delivery of residential habilitation services in the plan of service. (3-20-04)

2021. ADMINISTRATOR.

An agency administrator ~~is responsible and accountable for implementing the policies and procedures approved by the governing authority~~ is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. (3-20-04)

01. Administrator Qualifications. Each agency must demonstrate that it has a designated administrator who: (3-20-04)

- a. Is at least twenty-one (21) years of age; (3-29-12)
- b. Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
- c. Has a minimum of three (3) years of paid experience in service delivery ~~to persons with developmental disabilities~~ with the population served with at least one (1) year having been in an administrative role. (7-1-95)

02. Absences. The administrator must designate, in writing, a qualified ~~person~~ employee to perform the functions of the administrator to act in his absence. This document must be available upon request. (3-20-04)

03. Responsibilities. The administrator, or his designee, must assume responsibility for: (3-20-04)

- a. Developing and implementing written administrative policies and procedures which comply with applicable state and federal rules; (3-29-12)
- b. Developing and implementing policies and procedures ~~for agency staff and provider training, quality assurance, evaluation, and supervision~~ in accordance with this chapter. (3-29-12)
- c. ~~Conducting~~ and maintain documentation of regular agency staff meetings on at least a monthly basis or more often as necessary to review program and general participant needs and plan appropriate strategies for meeting those needs; (3-29-12)
- d. Maintaining adequate financial accounting records according to government accepted accounting principles; (3-29-12)
- e. Making all records available to the Department for review or audit; (3-29-12)
- f. Developing and implementing a policy addressing safety measures to protect participants, and staff as mandated by state and federal rules; and (3-29-12)

g. Ensuring that agency personnel, including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards scope of their certificate or license. (3-29-12)

202. Professional.

01. Professional. To be qualified as a Professional , a person must have at least one year of experience professionally supervised with the population served including experience writing and implementing Behavior and Skill training Program Implementation Plans and possess a bachelor's or master's degree in a human services field.

02. Satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and

03. Be Certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants he serves prior to working to participants and maintain current certification thereafter; and

04. Responsibilities. A professional must be employed by the Residential Habilitation Agency on a continuous and regularly scheduled basis and be readily available on-site to:

a. Conduct all skill training for agency direct service staff;

b. Complete an age appropriate functional assessment for participants served prior to the delivery of the supported living service.

c. Develop the program implementation plans according to the current authorized plan of service.

d. Supervise service elements of the agency at least quarterly or more often as necessary to include:

i. The observation and review of direct services performed by direct care staff to ensure that staff are implementing the programs as written and demonstrate the necessary skills to correctly provide the services, and

ii. Participant satisfaction with services.

iii. Monitoring of participant progress and documented changes where necessary to ensure revisions are made when progress, regression, or inability to maintain independence.

203. Direct service staff.

Direct service staff must meet the following minimum qualifications:

01. Be at least eighteen (18) years of age;

02. Be a high school graduate, or have a GED or demonstrate the ability to provide services according to a plan of service.

03. Be certified in first aid and Cardio-Pulmonary Resuscitation (CPR) appropriate for the age of participants he serves prior to working with participants and maintain current certification thereafter; and

04. Documentation that staff are free from communicable disease while on duty;

05. Each staff person assisting with participant medications must successfully complete and follow the Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. A copy of the certificate or other verification of successful completion must be maintained in the employee file.

06. Has satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"

07. Documentation the employee signed and received a copy of his job description stating he understands the duties of his position.

08. Documentation of having met all training requirements as outlined in section 204 of these rules.

2034. STAFF RESIDENTIAL HABILITATION PROVIDER TRAINING.

Each Residential Habilitation Agency must ensure that all staff who provide direct service complete training in accordance with these rules. Training must include orientation and ongoing training at a minimum as required under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Training is to be a part of the orientation training and is required initially prior to accepting participants. All required tTraining materials must be available to the Department for review, completed within six (6) months of employment with a residential habilitation agency and documented in the employee residential habilitation provider record. The agency must ensure that all employees and contractors receive orientation training in the following areas: (3-29-12)

01. Rights. Personal, civil, and human rights.

(7-1-95)

~~02. Disabilities. Developmental disabilities commensurate with the skills of participants served. (3-20-04)~~

~~03. Understanding of Participants' Needs. A basic understanding of the needs, desires, goals and objectives of participants served. (3-20-04)~~

~~04. Supervision. Appropriate methods of supervision. (7-1-95)~~

~~05. Review of Services. A review of the specific services that the participant requires. (3-20-04)~~

~~06. First Aid and CPR. First aid, CPR, and universal precautions. (7-1-95)~~

01. Orientation training must be completed prior to working with participants. The orientation training must include:

- a. Purpose and philosophy of services;
- b. Policies and procedures;
- c. Proper conduct in working with participants;
- d. Handling of confidential and emergency situations that involve the participant;
- e. Participant rights to include personal, civil and human rights;
- f. Be certified in first aid and age appropriate Cardio-Pulmonary Resuscitation (CPR) prior to working with participants and maintain current certification thereafter;
- g. Universal Precautions;
- h. Body mechanics and lifting techniques;
- i. Housekeeping techniques;
- j. Maintenance of a clean, safe, and healthy environment;
- k. Training specific to the needs of each participant served must be provided by a professional and include the following:
 - i. Instructional techniques: Correct and consistent implementation of the participant's program implementation plans;
 - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors;
 - iii. Accurate record keeping and data collection procedures;

02. Annual and ongoing Training.

The residential habilitation agency must ensure staff providing direct services complete a minimum of eight (8) hours of formal training each calendar year. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed.

~~2045.~~ -- 299. (RESERVED)

300. POLICIES AND PROCEDURES ~~S~~ MANUAL.

A policy and procedure manual must be developed by the residential habilitation agency ~~for~~ to effectively implementing its objectives. It must be approved by the governing authority. Policies and procedures must be reviewed at least annually and revised as necessary. The manual must, at a minimum, include policies and procedures reflecting the following: (3-20-04)

01. Scope of Services and Area Served. The agency must clearly define the Sscope of services offered and the geographic area served by the agency. (7-1-95)

02. Acceptance Standards. ~~Standards for acceptance of participants~~ The agency must develop and implement written policies and procedures which identify the ability of the agency to accept participants. (3-20-04)

03. ~~Records Standards~~ Participant Records. ~~Standards for clinical records maintained~~ Each Residential Habilitation agency must develop and implement written policies and procedures that describe the content, maintenance and storage of participant records. Each Residential Habilitation agency must maintain accurate, current and complete participant records. These records must be maintained for at least five (5) years following the

participant's termination of services or to the extent to meet other requirements. Each agency must have an integrated participant records system to provide past and current information and to safeguard participant confidentiality under these rules. (7-1-95)

04. Required Services. ~~Procedures that must be performed by each service.~~ Each Residential Habilitation Agency must develop and implement written policies and procedures that describe how the agency will assess and provide residential habilitation services. Residential Habilitation Services consist of an integrated array of individually tailored services and supports. These services and supports are designed to assist the participants to reside successfully in their own homes. Residential Habilitation includes:

a. Habilitation services aimed at assisting the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas:

i. Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities;

ii. Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations;

iii. Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures;

iv. Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature);

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community;

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs.

vii. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf.

viii. Skills training to teach participants family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self-direction, money management, socialization, mobility and other therapeutic programs.

05. Participant Safety. ~~Participant safety assessment procedures.~~ Each Residential Habilitation Agency must develop and implement a policy and procedure for assessing participant safety. The assessment must include environmental and structural risks to the participants served and how those risks will be reduced or eliminated. (3-20-04)

06. Emergency Care. ~~Emergency care measures and crisis and emergency planning.~~ Each Residential Habilitation agency must develop and implement emergency planning and care policies and procedures which include situational and environmental emergencies. The policy and procedure must include an emergency preparedness plan to follow in the event of an emergency. Written procedures must outline the steps to be taken in the event of an emergency including who is to respond, each person's responsibilities, where and how participants are to be evacuated and notification of emergency agencies. (7-1-95)

07. Administrative Records. ~~Administrative records to be maintained.~~ Each Residential Habilitation Agency is accountable for administrative records to be maintained. They must develop and implement a written

policy and procedure that identifies the content of their administrative record, the position responsible for review and update of content, and the review timeframe. Administrative records must be maintained for at least 5 years or to the extent necessary to meet other requirements. Administrative records must include administrative structure, legal authority and fiscal records.

- a. Administrative structure must include an organizational chart;
- b. Legal authority must be identified in organizational bylaws and other documentation of legal authority of ownership;
- c. Fiscal records must verify service delivery.

(7-1-95)

08. Personnel. ~~Personnel qualifications, responsibilities, and job description.~~ Each Residential Habilitation agency must develop and implement written personnel policies and procedures. The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees. Written personnel policies must be on file and provided to employees which describe the employee's rights, responsibilities, and agency's expectations. The record must contain documentation supporting staff qualifications. A record for each employee must be maintained from date of hire for not less than one (1) year after the employee is no longer employed by the agency or as necessary to meet other requirements. (7-1-95)

09. Participant Rights. ~~Personal, civil, and human rights and dissemination of participant rights policies.~~

Each Residential Habilitation Agency must develop and implement written policies that include a clear definition of personal, civil and human rights. Upon initiation of services, the agency must provide each participant or guardian, where applicable, with written and verbal information outlining rights. This information must be in easily understood terms. The policy and procedure must include the following rights:

- a. Humane care and treatment;
- b. Not be put in isolation;
- c. Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others;
- d. Be free of mental and physical abuse;
- e. Voice grievances and recommend changes in policies or services being offered;
- f. Have the opportunity to participate in social, religious, and community activities of their choice;
- g. Wear his own clothing and retain and use personal possessions;
- h. Be informed of his medical and habilitative condition, services available at the agency, expected benefits and attendant risks of receiving those services and alternative forms of services available;
- i. Reasonable access to all records concerning himself;
- j. Refuse services;
- k. Exercise all civil rights, unless limited by prior court order.
- l. Privacy and confidentiality;
- m. Receive courteous treatment;
- n. Receive a response from the agency to any request made within a reasonable time frame;
- o. Receive services that enhance the participant's social image and personal competencies and, whenever possible, promote inclusion in the community;
- p. Refuse to perform services for the agency. If the participant is hired to perform services for the agency the wage paid must be consistent with state and federal law;
- q. Review the results of the most recent survey conducted by the Department and the accompanying plan of correction;
- r. All other rights established by law; and
- s. Be protected from harm.
- t. Personal choices and preferences are respected and honored whenever possible and consistent with their well-being and their plan of service.

10. Health. Each Residential Habilitation Agency must develop and implement written policies and procedures that:

- a. Describe how the agency will ensure that each direct care staff person is free from communicable disease and infected skin lesions while on duty.;
- b. Describe how the agency will protect participants from exposure to individuals exhibiting symptoms of illness.

- c. Address any special medical or health care needs specific to each participant.
- d. Medication Standards and requirements in accordance to Section 303 of these rules.

11. Transportation. Each Residential Habilitation agency must develop and implement transportation policies that include the following:

- a. Preventative Maintenance Program. Establish a preventive maintenance program, including vehicle inspections and other regular maintenance to ensure participant safety.
- b. Transportation Safety Policy. Develop and implement a written transportation safety policy.
- c. Licenses and Certifications for Drivers and Vehicles. Obtain and maintain licenses and certifications for drivers and vehicles required by public transportation laws, regulations, and ordinances that apply to the agency to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles.
- d. Applicable Laws, Rules, and Regulations. Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used.
- e. Liability Insurance. Continuously maintain liability insurance that covers all passengers and meets the minimum liability insurance requirements under Idaho law. If an agency employee transports participants in the employee's personal vehicle, the agency must ensure that adequate liability insurance coverage is carried to cover those circumstances.

12. Quality Assurance. Each Residential Habilitation agency must develop and implement policies and procedures that describe the Purpose of the Quality Assurance Program that, at minimum, address the components of Section 405 of these rules.

13. Grievance. Each Residential Habilitation agency must develop and implement policies and procedures that describe the agencies methodology for accepting and responding to grievances presented by participants or their guardians.

301. **PERSONNEL RECORDS.**

~~**Policies.** The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents. Written personnel policies must be on file and provided to employees which describe the employee's rights, responsibilities, and agency's expectations.~~ (3-29-12)

~~**Work Schedules.** Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans, and all work schedules must be kept in writing. Daily work schedules, reflecting the daily adjustments of employees, shall be kept in writing, showing the personnel on duty at any given time. The agency must specify provisions and procedures to assure back-up coverage for those work schedules.~~ (3-20-04)

03.01.—Personnel Records. A record for each employee must ~~be maintained from date of hire for not less than one (1) year after the employee is no longer employed by the agency, and~~ include contain at least the following: (3-29-12)

- a. Name, current address and phone number of the employee; and (7-1-95)
- b. Social Security number; and (7-1-95)
- c. Education and experience; and (7-1-95)
- d. Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
- e. Date of employment; and (3-29-12)
- f. Position in the agency; and Documentation the employee signed and received a copy of his job description stating he understands the duties of his position; and (7-1-95)

- ~~g.~~ Date of termination of employment and reason for termination, if applicable; and (3-29-12)
- ~~h.~~ Documentation of initial orientation and required training; and (7-1-95)
- ~~i.~~ Evidence of current age appropriate CPR and First Aid certifications; and (7-1-95)
- ~~j.~~ Current Assistance With Medications certification, if applicable;
- ~~j-k.~~ Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-20-04)
- ~~k.~~ Evidence that the employee has received a job description and understands his duties. (3-29-12)

~~302. SERVICE PROVISION PROCEDURES.~~

- ~~01. Admission Procedures.~~ The following criteria must apply to all participants receiving services from a residential habilitation agency: (3-20-04)
 - ~~a.~~ Agreement to serve each participant must be based on a recommendation of a person-centered planning process conducted by the participant's person-centered planning team, including his service coordinator. (3-20-04)
 - ~~b.~~ The agency must obtain authorization from the Department for reimbursement for each Medicaid-covered eligible waiver service prior to providing residential habilitation services in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 (3-20-04)
- ~~02. Implementation Plan.~~ Each participant must have an implementation plan that includes goals and objectives specific to his plan of service residential habilitation program. (3-20-04)
- ~~03. Periodic Review.~~ Review of services and participant satisfaction must be conducted at least quarterly or more often if required by the participant's condition or program. (3-20-04)
- ~~04. Medication Standards.~~ The agency must maintain a policy describing the program's system for handling participant medications which is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing." (3-20-04)
- ~~05. Provider Status Review.~~ Residential Habilitation agencies must submit semiannual and annual status reviews reflecting the status of behavioral objectives or services identified on the plan of service to the plan monitor. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service. (3-20-04)
- ~~06. Termination Procedures.~~ The agency must terminate residential habilitation services if, as a result of a person-centered planning process conducted by the person-centered planning team, it is demonstrated that the participant is no longer in need of or desires Residential Habilitation services. The agency must notify the client in writing that the termination of services will occur and must develop a transition plan for termination of those services. The participant will be entitled to appeal the termination. The agency may not terminate services when to do so would pose a threat of endangerment to the participant or others. (3-20-04)

302. Medication Standards and Requirements. The agency must develop and implement written policy and procedures describing the program's system for handling participant medications which is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing." (3-20-04)

01. Medication Policy. Each Residential Habilitation Agency must develop written medication policies and procedures that outline in detail how the agency will ensure appropriate handling and safeguarding of medications. An

agency that chooses to assist participants with medications must also develop specific policies and procedures to ensure this assistance is safe and is delivered by qualified, fully-trained staff. Documentation of training must be maintained in the staff personnel file.

02. Handling of Participant's Medication.

a. The medication must be in the original pharmacy-dispensed container, or in an original over-the counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately, unless in a Mediset, blister pack, or similar system.

b. Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the participant's record. Medisets filled and labeled by a pharmacist or licensed nurse can serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use can also serve as written evidence of an order from the physician or other practitioner of the healing arts.

c. The agency is responsible to safeguard the participant's medications while the participant is at the agency or in the community.

d. Medications that are no longer used by the participant must not be retained by the agency or agency staff for longer than thirty (30) calendar days.

03. Self-Administration of Medication. When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a physician or other practitioner of the healing arts, or a licensed nurse has evaluated the participant's ability to self-administer medication and has found that the participant:

a. Understands the purpose of the medication;

b. Knows the appropriate dosage and times to take the medication;

c. Understands expected effects, adverse reactions or side effects, and action to take in an emergency; and

d. Is able to take the medication without assistance.

04. Assistance with Medication. An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place:

a. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program, a course approved by the Idaho State Board of Nursing, or other Department-approved training;

b. The participant's health condition is stable;

c. The participant's health status does not require nursing assessment, as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing," before receiving the medication or nursing assessment of the therapeutic or side effects after the medication is taken;

d. The medication is in the original pharmacy-dispensed container with proper label and directions, or in an original over-the-counter container, or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container;

e. Written and oral instructions from a licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person;

f. Written instructions are in place that outline required documentation of assistance and who to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed;

g. Procedures for disposal or destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course.

05. Administration of Medications. Only a licensed nurse or another licensed health professional working within the scope of his license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing."

303. POLICIES AND PROCEDURES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND MANAGEMENT OF MALADAPTIVE BEHAVIOR.

Each Residential Habilitation Agency must develop and implement written policies and procedures that address the development of participants' social skills and management of maladaptive behavior. These policies and procedures must include statements that address:

01. Evaluation of adaptive and maladaptive behavior. The agency must ensure an evaluation of participants' adaptive and maladaptive behaviors is completed. The evaluation must address the possible underlying causes or function of a behavior and identify what the participant may be attempting to communicate by the behavior.

02. Behavior Intervention Plans. Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. (3-20-04) Interventions must address the following:

- a. Social Skills Development. Focus on developing or increasing participants' social skills.
- b. Prevention Strategies. Ensure and document the use of positive approaches to increase social skills and decrease maladaptive behavior while using least restrictive alternatives and consistent, proactive responses to behaviors.
- c. Behavior replacement. ensure that programs to assist participants with managing maladaptive behavior include teaching of alternative adaptive skills to replace the maladaptive behavior.
- d. Protected Rights. Ensure the safety, welfare, and human and civil rights of participants are adequately protected.
- e. Objectives and Plans. Ensure that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior, and any other behaviors which significantly interfere with participants' independence or ability to participate in the community. Ensure that reinforcement selection is individualized and appropriate to the task and not contraindicated for medical reasons.
- f. Participant Involvement. Ensure plans developed by the Residential Habilitation Agency involve the participants, whenever possible, in developing the plan to increase social skills and to manage maladaptive behavior.
- g. Written Informed Consent. Ensure programs developed by an agency to assist participants with managing maladaptive behaviors are conducted only with the written informed consent of the participant, or legal guardian, where applicable. When programs used by the agency are developed by another service provider the agency must obtain a copy of the informed consent.
- h. Review and Approval. Ensure programs developed by an agency to manage maladaptive behavior are implemented after the review and written approval of the professional. If the program contains restrictive or aversive components, a licensed individual working within the scope of their license, must also review and approve, in writing, the plan prior to implementation. When programs implemented by the agency are developed by another service provider, the agency must obtain a copy of these reviews and approvals.

03. Appropriate Use of Interventions. Employees of the agency must not use physical, verbal, sexual or psychological abuse or punishment. The agency must ensure interventions used to manage participants' maladaptive behavior are never used:

- a. For disciplinary purposes. Employees of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet;
- b. For the convenience of staff;
- c. As a substitute for a needed training program; or
- d. By untrained or unqualified staff.

04. Use of Restraint on Participants. No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: (3-20-04)

- a. Chemical restraint. Employees or contractors of the agency must not use chemical restraint unless authorized by an attending physician. (3-29-12)
- b. Mechanical restraint.
 - i. Mechanical restraint may be used for medical purposes when authorized by an attending physician.
 - ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant or guardian if applicable, his team and a qualified professional. Informed participant consent is required.
- c. Physical restraint.
 - i. Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented in the participant's record.

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant or his guardian if applicable, his team and a qualified professional. Informed participant consent is required.

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant or his guardian if applicable, his team and a qualified professional. Informed participant consent is required.

3034. -- 399. (RESERVED)

400. PARTICIPANT RECORDS REQUIREMENTS.

Each Residential Habilitation agency certified under these rules must maintain accurate, current, and complete participant and administrative records. Each participant record must support the individual's choices, interests, and needs that result in the type and amount of each service provided. Each participant record must clearly document the date, time, duration, and type of service, and include the signature of the individual providing the service, for each service provided. Each signature must be accompanied both by credentials and the date signed. Each participant record must contain the following information:

01. Participant Records ~~Each agency must have and maintain a written policy outlining the required content of participant records, criteria for completeness, and methodology to be used to ensure current and accurate records. An individual record must be maintained for each participant and retained for a period of three (3) years following the participant's termination of services. All entries made into a participant record must be dated and signed in ink.~~ (3-20-04)

02.01. Required Information. ~~Records must include at least the following information:~~ **Profile Sheet.**
Each participant record must include a profile sheet containing the following: (3-20-04)

- a. Name, current address and current phone number of the participant. (3-20-04)
- b. ~~Social Security and Medicaid ID numbers.~~ (7-1-95)
- c. Gender and marital status. (3-20-04)
- d. Date of birth. (7-1-95)
- e. Names, addresses, and current phone numbers of legal guardian if applicable, family, advocates, friends, and persons to be contacted in case of an emergency. (3-20-04)
- f. Names, addresses and current phone number of physician, pharmacy, dentist, and other health care providers as applicable. (7-1-95)
- g. A list of current medications, diet, and all other treatments prescribed for the participant. (3-20-04)
- h. Current diagnoses.

02. Authorized Plan of Service. The agency must obtain a current authorized plan of service from the paying entity.

03. Participant rights. Each Residential Habilitation Agency must document upon initiation of services, that each participant and his guardian, where applicable, have been informed of their rights, access to grievance procedures, and the names, addresses and telephone numbers of protection and advocacy services. This information must be provided in easily understood terms both verbally and in writing.

h.04. History and Physical. Results of a current history and physical ~~when necessary.~~ (7-1-95)

~~i. Results of an age appropriate functional assessment, and person centered plan.~~ (7-1-95)

05. Functional Assessment. An age appropriate functional assessment must be completed or obtained by the agency prior to the delivery of the supported living service. The functional assessment must be used for the development of Program Implementation Plans and include:

a. An assessment reflecting the person's functional abilities in the following areas: Self-direction; Money management; Daily living skills, Socialization; Mobility; Behavior shaping and other therapeutic programs; and
a.b. The results, test scores, and narrative reports signed with credentials and dated by the qualified professional.

~~j. Psychosocial information. (7-1-95)~~

06. Psychological or Psychiatric Assessment

When a participant has had a psychological or psychiatric assessment, the results of the assessment must be maintained in the participant's record and used when developing objectives.

~~k. Habilitation program, including documentation of planning, continuous evaluation, and participant satisfaction with the program. (3-20-04)~~

07. Program Implementation Plans ~~Habilitation program, including documentation of planning, continuous evaluation, and participant satisfaction with the program. (3-20-04)~~

Each participant must have an implementation plan that includes goals and objectives specific to his plan of service residential habilitation program. Program implementation plans that include participant's name, baseline statement, measurable objectives, written instructions to staff, service environments, target date.

~~l.08.~~ Record of significant incidents, accidents, illnesses, and treatments. (7-1-95)

~~m.09.~~ Daily medication log when applicable. (7-1-95)

~~n.10.~~ Daily record of the date, time, duration, and type of service provided. (7-1-95)

~~o.11.~~ The plan of service including implementation plans maintained by the agency, and data based progress notes. Data based progress notes that correspond with the plan of service when services are delivered to the participant. (3-20-04)

12. Provider Status Review. Residential Habilitation agencies must review participant progress to ensure revisions are made when progress, regression, or inability to maintain independence. The review of progress must be documented on a provider status review. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service. (3-20-04)

13. Termination Procedures. ~~The agency must terminate residential habilitation services if, as a result of a person centered planning process conducted by the person centered planning team, it is demonstrated that the participant is no longer in need of or desires Residential Habilitation services. The agency must notify the client in writing that the termination of services will occur and must develop a transition plan for termination of those services. (3-20-04)~~ The agency must develop and implement termination policies and procedures that address how they will ensure safety of the participant and community to the extent possible in the event that the participant no longer benefits from services. The agency must ensure that the procedures include written notice of no less than thirty (30) days for termination. Services may be terminated prior to thirty (30) days if both parties agree in writing to the termination conditions. The agency may not terminate services when to do so would pose a threat of endangerment to the participant or others. The participant will be entitled to appeal the termination.

401-402.(RESERVED)

402. PARTICIPANT RIGHTS.

~~01. Responsibilities.~~ Each residential habilitation agency must develop and implement a written policy outlining the personal, civil, and human rights of all participants. The policy protects and promotes the rights of each

participant and includes the following: (3-20-04)

~~a. Inform each participant, or legal guardian, of the participant's rights and the rules of the agency; (3-20-04)~~

~~b. Allow and encourage individual participants to exercise their rights as participants of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; (3-20-04)~~

~~c. Inform each participant, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; (3-20-04)~~

~~d. Provide each participant with the opportunity for personal privacy and ensure privacy during provision of services; (3-20-04)~~

~~e. Ensure that participants are not compelled to perform services for the agency, its employees, or contractors and ensure that participants who do work for the agency, its employees, or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; (3-29-12)~~

~~f. Ensure that participants have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their plans of service; and (3-20-04)~~

~~g. Ensure that participants have the opportunity to participate in social, religious, and community group activities. (3-20-04)~~

403. PARTICIPANT FINANCES.

Each Residential habilitation agency must develop and implement a written policy and procedure that describes the management of participant funds. In order for an agency to manage participant's funds, they must have written designation as a payee by either Social Security Administration or the participant's guardian or conservator if they are not a recipient of Social Security funds. When the residential habilitation agency or its employees or contractors are designated as the payee on behalf of the participants, the agency must establish and maintain an accounting system that: (3-29-12)

01. Participant's Personal Finance Records. Assures a full and complete accounting of participants' personal funds entrusted to the agency, its employees, or contractors on behalf of participants. Records of financial transactions must be sufficient to allow a thorough audit of the participant's funds. (3-29-12)

An agency that manages participant funds must:

a. Establish a separate individual account at a financial institution for each participant. There can be no commingling of participant funds with agency funds. Borrowing between participant accounts is prohibited;

b. Notify the participant that funds are available for his use;

c. Document any financial transactions. A separate transaction record must be maintained for each participant;

d. Restore funds to the participant if the agency cannot produce proper accounting records of participant's funds or property, including receipts for purchases made using the participant's personal funds.

e. Provide access to the participant's funds to the participant or their legal guardian or conservator.

~~02. No Commingling of Funds. Precludes any commingling of participant funds with agency funds. (3-20-04)~~

~~03. Availability of Funds. Ensures that the participant's financial records must be available on request to the participant, participant's legal guardian or advocate. (3-20-04)~~

404. COMMUNICATION WITH PARTICIPANTS, PARENTS, LEGAL GUARDIANS, AND OTHERS. REPORTING AND COMMUNICATION REQUIREMENTS.

~~The residential habilitation agency must promote participation of participants, legal guardians, relatives and friends in the process of providing services to a participant unless their participation is unobtainable or inappropriate as prescribed by the plan of service; and~~ Each residential habilitation agency must develop and implement written policies and procedures outlining how the agency will document reporting and other communications for the following; (3-20-04)

01. Reciprocal Communication. ~~Answer communications from participant's families and friends promptly and appropriately; and (3-20-04)~~ Promote communication with the participant, legal guardian, and other individuals of the participant's choice in the process of providing services; and (3-20-04)

02. Promotion of Visits and Activities. Promote frequent and informal opportunities for visits, trips or vacations; and (7-1-95)

03. Reporting Requirements. Any agency employee or contractor must immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5302, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing Ombudsman for the Elderly Program," or the designated state protection and advocacy system for persons with developmental disabilities when applicable; and (3-29-12)

~~**0. Providing Evidence of Violation.** Agencies must provide evidence that all alleged violations are thoroughly internally investigated and must protect the participant from the possibility of abuse while the investigation is in progress; and (3-20-04)~~

~~**0. Reporting Results of Investigations.** Results of all investigations must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action must be taken; and (3-20-04)~~

03.04. Notification of Guardian of Participant's Condition. Notify the participant's legal guardian within twenty-four (24) hours, if one exists, of any significant incidents, or changes in participant's condition including serious illness, accident, death, or abuse. (3-29-12)

04.05. Notification to Department of a Participant's Condition. Through a Department approved process, the agency must notify the Department within twenty-four (24) hours of any significant incidents affecting health and safety or changes in a participant's condition, including serious illness, accident, death, emergency medical care, hospitalization, adult protective services contact and investigation, or if the participant is arrested, contacted by, or under investigation by law enforcement, or involved in any legal proceedings. The events and the agency response to the events must be documented in the participant file. (3-29-12)

~~**06. Providing Evidence of Violation.** Agencies must provide evidence that all alleged violations are thoroughly investigated and must protect the participant from the possibility of abuse while the investigation is in progress; and (3-20-04)~~

~~**07. Reporting Results of Investigations.** Results of all agency investigations must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action must be taken; and (3-20-04)~~

~~405. — TREATMENT OF PARTICIPANTS.~~

~~The residential habilitation agency must develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the participant to include at least the following: (3-20-04)~~

~~**01. Interventions.** Positive behavior interventions must be used prior to and in conjunction with, the implementation of any restrictive intervention. (3-20-04)~~

~~**02. No Abuse.** Employees or contractors of the agency must not use physical, verbal, sexual, or psychological abuse or punishment. (3-29-12)~~

~~03. No Punishment. Employees or contractors of the agency must not withhold food or hydration that contributes to a nutritionally adequate diet. (3 29 12)~~

~~04. Reporting Violations. Any agency employee or contractor must report immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5303, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing Ombudsman for the Elderly Program," or the designated state protection and advocacy system for persons with developmental disabilities when applicable. (3 29 12)~~

~~05. Providing Evidence of Violation. Agencies must provide evidence that all alleged violations are thoroughly investigated and must protect the participant from the possibility of abuse while the investigation is in progress. (3 20 04)~~

~~06. Reporting Results of Investigations. Results of all investigations must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action must be taken. (3 20 04)~~

~~07. Proper Treatment of Participants. Participants must be treated with dignity and respect and their personal choices and preferences are respected and honored whenever possible and consistent with their well being and their plan of service. (3 20 04)~~

~~08. Use of Restraint on Participants. No restraints, other than physical restraint in an emergency, must be used on participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on participants: (3 20 04)~~

~~a. Chemical restraint. Employees or contractors of the agency must not use chemical restraint unless authorized by an attending physician. (3 29 12)~~

~~b. Mechanical restraint. (7 1 95)~~

~~i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7 1 95)~~

~~ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3 20 04)~~

~~c. Physical restraint. (7 1 95)~~

~~i. Physical restraint may be used in an isolated emergency to prevent injury to the participant or others and must be documented in the participant's record. (3 20 04)~~

~~ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the participant, his service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3 20 04)~~

~~d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the participant, his service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 700 through 706. Informed participant consent is required. (3 20 04)~~

~~200~~**405. QUALITY ASSURANCE ~~OUTCOME REVIEW~~ PROGRAM.** Each residential habilitation agency defined certified under these rules must develop and implement a quality assurance program.

~~01. Responsibilities.~~ The certifying agency must conduct an outcome based review on each residential habilitation agency on a routine basis as specified in the service agreement. The outcome based review must include at least the following: (3-20-04)

~~a. Review of participant participation and satisfaction in residential habilitation services and identification, planning, and delivery; and (3-20-04)~~

~~b. An overall policy and administrative review and, if necessary, a clinical record review; and (7-1-95)~~

~~c. Assessment of the extent to which the agency's services meet the needs of the participant as identified on the plan of service, and promote community integration and participation. (3-20-04)~~

01. The quality assurance program is an ongoing, proactive, internal review of the residential habilitation agency designed to ensure:

a. Services provided to participants produce measurable outcomes, are high quality, and are consistent with individual choices, interests, needs, and current standards of practice;

b. Sufficient staff and material resources are available to meet the needs of each person served;

c. The environment in which services are delivered is safe and conducive to learning;

d. Skill training activities are conducted as written in the program implementation plans.

e. The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices.

02. Quality Assurance Program Components. Each Residential Habilitation Agency's written quality assurance program must include:

a. Goals and procedures to be implemented to achieve the purpose of the quality assurance program;

b. Person, discipline, or department responsible for each goal;

c. A system to ensure the correction of problems identified within a specified period of time;

d. A method for assessing participant satisfaction quarterly including minimum criteria for participant response and alternate methods to gather information if minimum criteria is not met;

e. An annual review of the agency's code of ethics signed and dated by the administrator which identifies all violations, and an implementation of an internal plan of correction;

f. An annual review of agency's policy and procedure manual signed and dated by the administrator that specifies content of revisions made; and

g. Ongoing review of participant progress to ensure revisions are made when progress, regression, or inability to maintain independence is identified. Quarterly review completed by the professional to include face-to-face visit in the participant's home that documents, participant's condition and observation of services being provided .

03. Additional Requirements. The quality assurance program must ensure that Residential Habilitation services provided to participants:

a. Are developed with each participant or legal guardian, where applicable, and actively promote the participation, personal choice, and preference of the participant;

b. Are providing the greatest degree of independence and quality of life possible;

c. Provide individualized services and supports;

d. Provide opportunities for community participation and inclusion;

e. Offer opportunities for participants to exercise their rights; and

f. Are observable in practice

406. -- 499. (RESERVED)

500. WAIVERS.

Under Section 39-2404, Idaho Code, waivers to these rules, may be granted by the Department as necessary provided that granting the waiver does not endanger the health or safety or rights of any participant. The decision to grant a waiver must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may

be renewed annually if sufficient written justification is presented to the Department. (3-20-04)

501. ENFORCEMENT PROCESS.

The Department may impose a remedy or remedies when it determines a residential habilitation agency is not in compliance with these rules. (3-29-12)

01. Determination of Remedy. In determining which remedy or remedies to impose, the Department will consider the residential habilitation agency's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, the Department may impose any of the remedies in Subsection 501.02 of this rule, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (3-29-12)

02. Enforcement Remedies. If the Department determines that a residential habilitation agency is out of compliance with these rules, it may impose any of the following remedies according to Section 501.01 of this rule. (3-29-12)

a. Require the residential habilitation agency to submit a plan of correction that must be approved in writing by the Department; (3-29-12)

b. Issue a provisional certificate with a specific date for correcting deficient practices; (3-29-12)

c. Ban enrollment of all participants with specified diagnoses; (3-29-12)

d. Ban any new enrollment of participants; (3-29-12)

e. Revoke the residential habilitation agency's certificate; or (3-29-12)

f. Summarily suspend the certificate and transfer participants. (3-29-12)

03. Immediate Jeopardy. If the Department finds a residential habilitation agency's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the residential habilitation agency's certificate. (3-29-12)

04. No Immediate Jeopardy. If the Department finds that the residential habilitation agency's deficiency or deficiencies do not immediately jeopardize participant health or safety, the Department may impose one (1) or more of the remedies specified in Subsections 501.02.a. through 501.02.e. of this rule. (3-29-12)

05. Repeat Deficiencies. If the Department finds a repeat deficiency in a residential habilitation agency, it may impose any of the remedies listed in Subsection 501.02 of this rule as warranted. The Department may monitor the residential habilitation agency on an "as needed" basis, until the agency has demonstrated to the Department's satisfaction that it is in compliance with requirements governing residential habilitation agencies and that it is likely to remain in compliance. (3-29-12)

06. Failure to Comply. The Department may impose one (1) or more of the remedies specified in Subsection 501.02 of this rule if: (3-29-12)

a. The residential habilitation agency has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or (3-29-12)

b. The residential habilitation agency has failed to correct the deficiencies stated in the agency's accepted plan of correction and as verified by the Department, via resurveys. (3-29-12)

502. REVOCATION OF CERTIFICATE.

01. Revocation of the Residential Habilitation Agency's Certificate. The Department may revoke a residential habilitation agency's certificate when persuaded by the preponderance of the evidence that the agency is not

in substantial compliance with the requirements in this chapter of rules. (3-29-12)

02. Causes for Revocation of the Certificate. The Department may revoke any residential habilitation agency's certificate for any of the following causes: (3-29-12)

a. The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; (3-29-12)

b. The agency is not in substantial compliance with these rules; (3-29-12)

c. When persuaded by preponderance of the evidence that conditions exist in the agency that endanger the health or safety of any participant; (3-29-12)

d. Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (3-29-12)

e. The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; (3-29-12)

f. The agency has failed to comply with any of the conditions of a provisional certificate; (3-29-12)

g. The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; (3-29-12)

h. An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules; (3-29-12)

i. Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code; (3-29-12)

j. The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency; (3-29-12)

k. The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Section 300.09 of these rules; (3-29-12)

l. The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. (3-29-12)

503. NOTICE OF ENFORCEMENT REMEDY.

The Department will notify the following of the imposition of any enforcement remedy on a residential habilitation agency: (3-29-12)

01. Notice to the Residential Habilitation Agency. The Department will notify the residential habilitation agency in writing, transmitted in a manner that will reasonably ensure timely receipt. (3-29-12)

02. Notice to Public. The Department will notify the public by sending the residential habilitation agency printed notices to post. The residential habilitation agency must post all the notices on their premises in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. (3-29-12)

03. Notice to the Professional Licensing Boards. The Department will notify professional licensing boards, as appropriate. (3-29-12)

504. -- 509. (RESERVED)

510. EMERGENCY POWERS OF THE DIRECTOR.

In the event of an emergency endangering the life or safety of a participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director must provide an opportunity for a hearing. (3-29-12)

511. INJUNCTION TO PREVENT OPERATION WITHOUT CERTIFICATE.

Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter. (3-29-12)

512. -- 999. (RESERVED)